



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Arlen D. Houle

42 IBIA 253 (03/21/2006)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF ARLEN D. HOULE : Order Docketing and Dismissing  
: Appeal  
:  
: Docket No. IBIA 06-46  
:  
: March 21, 2006

On March 10, 2006, the Board received a notice of appeal from Gilbert Houle (Appellant), *pro se*. Appellant's notice of appeal was forwarded to the Board by the Bismark, North Dakota field office of the Probate Hearings Division, Office of Hearings and Appeals (Field Office). Appellant seeks review of an August 22, 2005 order denying rehearing entered by Indian Probate Judge P. Diane Johnson in the estate of Arlen D. Houle, deceased Turtle Mountain Chippewa Indian, Probate No. P000018304IP (GP-304-0702). The Board docketed the appeal, but dismisses it for lack of jurisdiction because it is untimely.

The certificate of mailing on Judge Johnson's order denying rehearing shows that it was mailed to the interested parties, including Appellant, on the same day the order was issued, August 22, 2005. The order informed the parties that the decision would become final for the Department unless it was timely appealed to the Board. It further advised the parties that "[a]ny appeal must be filed within sixty (60) days," and provided correct instructions for sending an appeal to the Board. Appellant did not send his notice of appeal to the Board, but instead mailed it to the Field Office, where it was received on September 9, 2005. Appellant subsequently mailed a second letter to the Field Office on October 27, 2005, stating that he had not received a response to his notice of appeal.

Section 4.320(b) of 43 C.F.R. provides that an appeal from an order denying rehearing must be filed "[w]ithin 60 days from the date of the decision." The 60-day deadline for filing an appeal is jurisdictional. *Id.* § 4.320(b)(3). The Board has consistently held that when an appellant has been given correct appeal information, but chooses to file an appeal with an official other than the Board, resulting in receipt of the appeal by the Board outside of the time for filing an appeal, the appeal is untimely. *See, e.g. Estate of Mary Gosaduk Johnson Tilden*, 39 IBIA 223 (2004); *Estate of William L. Jones, Sr.*,

37 IBIA 272 (2002). <sup>1/</sup> Because the Board received Appellant's notice of appeal after the 60-day appeal period had expired, the Board finds that the appeal is untimely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for lack of jurisdiction.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Amy B. Sosin  
Acting Administrative Judge

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<sup>1/</sup> In contrast to the facts in Estate of Mary Gosaduk Johnson Tilden, 39 IBIA 223 and Estate of William L. Jones, Sr., 37 IBIA 272, in which the administrative law judge promptly forwarded a misdirected notice of appeal to the Board, there was substantial delay in this case in the transmittal from the Field Office to the Board of Appellant's letters. However, an appellant who ignores explicit appeal instructions and files his notice of appeal in the wrong office bears the risk of any delay in transmitting the notice to the Board. Estate of Douglas Keams, 37 IBIA 111 (2002).